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In the

Supreme Court of the United States

OCTOBER SESSION, 1956

No. 381

In the Matter of
NATIONAL AIRCRAFT CORPORATION,
a Corporation, Subsidiary Debtor.

JEROME F. DUGGAN, Trustee in Reorganization of
National Aircraft Corporation, Subsidiary Debtor,
Petitioner,

vs.

CHARLES J. GREEN, Substitute Trustee Under Trust
Agreement Known as Trust No. 140, etc.
Respondent.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jerome F. Duggan, as Trustee in Reorganization for the National Aircraft Corporation, a Subsidiary Debtor, by appointment of the United States District Court for the Eastern Division of the Eastern Judicial District of Missouri, in a proceeding for the reorganization of the

subsidiary debtor aforesaid, files this his petition and respectfully prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Eighth Circuit rendered on appeal from a judgment of the aforesaid District Court on a controversy arising in said proceeding in Bankruptcy, in which the respondent herein was duly substituted as appellant and this petitioner was appellee.

The jurisdiction of this Court is invoked because of the public importance of the decision involved and its effect on the interpretation and application of the Bankruptcy Act; and of its effect on the orderly administration of said Act and its effect as tending to impair the exclusive jurisdiction of reorganization courts over the assets of debtors; and its effect on the maintenance of the judicial dignity of reorganization courts and the enforcement of their lawful orders and injunctions free from interference by unauthorized persons.

RECORD ENTRIES.

The opinion of the Court of Appeals was announced on February 4, 1957.

Subsequently and on April 15, 1957, the Court of Appeals, on petition of the respondent herein, modified its opinion of February 4, 1957, and overruled respondent's petition for rehearing.

Whereupon, this petitioner filed his renewed and supplemental petition for rehearing and to clarify or transfer to the Court en banc, which the Court received and on consideration thereof overruled same on May 9, 1957.

The jurisdiction of this Court for the purpose sought is conferred by the Judicial Code as amended, 11 USC, 1254.

A copy of the opinion of said Court of Appeals and the modification and final order is appended hereto.

QUESTIONS.

Question 1:

Whether or not one claiming confirmation of a title to certain real estate of a debtor in reorganization on the basis of a judicial sale by a Court having no jurisdiction of the subject matter, such alleged judicial sale being consummated in violation of the exclusive jurisdiction of a reorganization Court over the person and property of a debtor, may a Court, having adjudged such sale or purchase void, award such alleged purchaser a special lien against the subject matter of the alleged void sale in any sum or in a sum calculated to reimburse the alleged purchaser for his loss or damages sustained as the result of his void purchase upon finding that the alleged purchaser was without actual knowledge of the facts rendering his purchase void and that, though charged with constructive knowledge thereof by recitations and records of the Court, from whom he acquired his void title, and from records in the Recorder of Deeds office of the County wherein the real estate was located, that the authority of his alleged vendor to make said judicial sale had been superseded and enjoined by the recording of the order and injunction of the Court having actual jurisdiction of the property.

Question 2:

Congress under its constitutional power having prescribed such claims as may be allowable and payable in bankruptcy, with provision for their priority, may a Court of the United States allow and provide for the payment from the assets of the debtor of a claim based on general equitable principles but not provided for by the Bankruptcy Act?

Question 3:

May a Court allow a claim based solely upon the Court's construction of the general rules of equity and provide for its payment by assessing it as an equitable lien against specific property of a debtor, the allowance of such equitable claim not being authorized by any provision of the Bankruptcy Act, nor authorized by any other valid statute?

Question 4:

May a Court allow against the estate of a debtor a claim based solely upon general rules of equity having its source and arising subsequent to the admission of the debtor to reorganization, such equitable claim not within Section 63 of the Bankruptcy Act defining allowable claims, and prescribing their classification priority, and by the devise of charging such claim as an equitable lien on an asset of the debtor in effect gives it a priority over all other demands and claims against the estate, including the cost of administration, taxes and demands generally?

Question 5:

May a Court, having found that the claimant was claiming under a sale void as being in conflict with the jurisdiction and injunction of the reorganization Court, proceed and allow the claimant a sum calculated to compensate him for business asset losses incurred by him as the result of such void purchases and sale and by the device of allowing him an equitable lien on the property constituting the subject matter of the void purchase award him priority over all other demands against the assets or provide that in the event of deficiency resulting on the foreclosure of said equitable lien authorize the filing of a claim for such deficiency?

Question 6:

May a Court, upon concluding that at the time of consummating an alleged purchase of property of a subsidiary debtor, claimant was innocent and without actual knowledge that his alleged purchase thereof was void and constituted an unlawful interference with the jurisdiction and injunction of the Court, award him an equitable lien against an asset of a subsidiary debtor when it appeared by his petition and the evidence that subsequent to the alleged consummation of his unlawful purchase and at a time when he had full knowledge of facts rendering the purchase void he sought the processes of the Court to confirm and declare his title to the subject matter of the void sale?

Question 7:

May one who petitions for consummation of a void title with full knowledge of the facts rendering his title void be granted equitable relief on a finding that at a time prior thereto he had expended money in ignorance of the facts which rendered his acquisition void?

STATEMENT

The opinion of the Court below was rendered on a petition of the respondent filed in the District Court below on April 7, 1955 (R. 1-17).

In substance the respondent alleged that he was the legal or equitable owner of certain real estate of the Subsidiary Debtor located in Madison County, Indiana, and then in the possession of this petitioner as Trustee in reorganization. He based his alleged title upon an alleged purchase at a judicial sale of the assets of the Subsidiary Debtor then allegedly a bankrupt in an involuntary proceeding in bankruptcy pending in the said Indiana Court.

It appeared that the power and authority of the Indiana Court and its Trustee to effect a sale of the assets of the Subsidiary Debtor had been superseded by an Order of the Missouri Court admitting the Subsidiary Debtor to reorganization and enjoining further proceedings by the Indiana Court and expressly enjoining its trustee from proceeding with the sale under which respondent claimed title, and that the power and authority of the Court and its Trustee to effect a sale had been judicially determined, adverse to the respondent's claim of title, by a decision of this Court rendered on an appeal from the order confirming the sale on which the respondent relies for title by this Court in the case of Jerome F. Duggan, etc., v. James C. Sansberry, etc., 327 U. S. 499, 90 L. Ed. 809.

The respondent prayed for a finding that National Aircraft Corporation was not at any time a Subsidiary of the original Debtor involved and for a finding that this (the Missouri) Court was without jurisdiction to enter its Order of April 19, 1944 (admitting the Subsidiary to reorganization and enjoining further proceedings in the Indiana Court). The petition further prayed for an Order directing

that the Order of the Missouri Court appointing this petitioner Trustee of National Aircraft Corporation and enjoining further proceedings in the Court of Bankruptcy in Indiana be vacated and held for naught, and that this petitioner be required to quit-claim the property involved to the respondent for lack of jurisdiction of the District Court in Indiana and its Trustee, Jerome F. Duggan, Trustee, etc., v. James C. Sansberry, Trustee, etc., 327 U. S. 499.

The District Court denied respondent's claim of title, legal or equitable, on the ground that the sale under which respondent claimed was had in violation of the reorganization Court's jurisdiction over the Subsidiary Debtor and its assets and in violation of its injunction against interference with the assets. That the alleged judicial sale was unauthorized by the reorganization Court, that respondent's purchase thereat was void and that respondent stood in the position of a volunteer and trespasser and was not entitled to equitable relief from the consequences of his wrong at the expense of the estate and the District Court further awarded this petitioner a judgment on his counterclaim.

The respondent appealed and Court of Appeals by its judgment agreed with the District Court that respondent's alleged purchase was void and conferred no title on the respondent, but nevertheless concluded that on general principles of equity the respondent was entitled to an equitable lien against the real estate to which he was claiming title on the theory that he was "innocent" and without "actual" knowledge of the infirmity of his vendors title when he consummated his alleged purchase, and entered into possession of the property, and was equitably entitled to a lien against the real estate for his purchase money, and for his net expenses by way of and cost of operating and maintaining and exploiting the property

with interest on the unreimbursed part thereof until foreclosure of the lien.

The Court of Appeals reversed the judgment for this petitioner on his counterclaim on concluding that there was no basis in the laws to support it.

The Court of Appeals thereafter modified its judgment on motion of the respondent by providing that in the event there was a deficiency on the foreclosure of the equitable lien, that its judgment should be without prejudice to any claim which the respondent might thereafter file to recover such deficiency from the general assets of the estate.

The District Court denied equitable relief to respondent on the finding that his sole relationship to the property of the Subsidiary Debtor to which he was claiming title was that of a voluntary trespasser and interloper (R. 68). The Court of Appeals on its finding that at the time he purchased the property from the unauthorized Court and Trustee and took possession of the property and disbursed the purchase price and paid for improving the property, for its protection, leasing and insuring it he was without "actual" knowledge of the fact that exclusive jurisdiction over the property had vested in the reorganization Court below by its Order approving the petition of the Subsidiary Debtor for reorganization and its injunction in aid of its jurisdiction.

Accordingly, the Court of Appeals ruled that though respondent had constructive knowledge through reference to the Order of the Court below and its injunction in the record of the proceeding through which he claimed title and through its having been recorded in the Recorder's Office for the County in which the real estate was located some forty (40) days before he consummated his alleged purchase, he was nevertheless innocent because the doctrine of constructive notice is without application (and)

his good faith can be challenged only on the ground that he had actual knowledge of such facts and circumstances as would have put a man of ordinary circumspection upon inquiry and deliver the possession of the same to petitioner, and for an Order on the petitioner to account for all monies received by him as rental or otherwise from the aforesaid real estate.

The petition also prayed for damages sustained by him as a result of his being deprived of the use and profit of the real estate from March 6, 1946, to date with interest thereon, together with a judgment for such penalties as respondent might have to pay to discharge the real estate involved from tax liens and for the payment to the respondent of a reasonable attorney's fee.

The petition concluded with a prayer for such other and further relief as equity may require (R. 15-16).

The petitioner in this proceeding is a Trustee in reorganization for National Aircraft Corporation, Subsidiary Debtor, by appointment of the United States District Court in Bankruptcy for the Eastern Division of the Eastern Judicial District of Missouri, hereinafter referred to as the Missouri Court. The respondent is a beneficiary and successor trustee of a private trust to one Benjamin S. Mesirow, deceased, and has been substituted on the record for said Mr. Mesirow and the said Trustee and his successor will be referred to hereinafter indifferently as respondent.

Before the voluntary petition of the Subsidiary Debtor for reorganization was approved by the Missouri Court, the Subsidiary Debtor had been adjudged a bankrupt in a proceeding in Involuntary Bankruptcy pending in the United States District Court for the Southern Judicial District of Indiana. Said Court will hereinafter be referred to as the

Indiana Court and its Trustee, James C. Sansberry, as the Indiana Trustee.

On April 19, 1944, when the Subsidiary Debtor's petition for reorganization filed and approved in the Missouri Court, Mr. Sansberry, the Indiana Trustee, had avertised a sale of the bankrupts' or Subsidiary Debtor's assets for April 20, 1944, and the Missouri Court on approving the Subsidiary's petition enjoined the Indiana Court and its Trustee from interfering with or selling its assets and ordered them turned over to this petitioner named reorganization Trustee.

A certified copy of the order and injunction of the Missouri Court was duly served on the Indiana Trustee and his auctioneer before his sale commenced, notwithstanding which the Indiana Trustee proceeded with the advertised sale, announcing only that his sale would be subject to the approval of his Referee.

The Trustee thereupon filed his report of sale with the Referee for approval and attached thereto the certified copy of the Missouri Court's order approving the Subsidiary Debtor's petition for reorganization and appointing this petitioner its trustee in reorganization and its injunction directed to Mr. Sansberry and his auctioneer enjoining them from proceeding with the advertised sale. The Trustee's report also attached and recited due service of said Order and injunction upon him before his sale commenced.

Thereupon the Referee continued the hearing on the report of the Referee for the recited purpose of permitting Mr. Sansberry, the Trustee, and his attorney to proceed to St. Louis to investigate the facts and circumstances relating to the Missouri Court's Order and injunction. Upon further hearing on the report pursuant to the continuance, the Referee, reciting that Mr. Sansberry and his

counsel reported that they had visited St. Louis and conferred with various parties but had not submitted themselves to the jurisdiction of the Missouri Court, approved the report of the Trustee and authorized him to consummate the sale upon receipt by him of the purchase price.

Whereupon, this petitioner filed a certified copy of the Missouri Court's Order and injunction for record in the office of the Recorder of Deeds for Madison County, Indiana, and petitioned for and was allowed a review by the Judge of the Indiana Court of the Referee's Order approving the sale in question and ordering its consummation upon receipt of the purchase price.

On hearing on the review the Judge affirmed the ruling of the Referee and the petitioner, in due time, noticed an appeal to the Court of Appeals for the Seventh Circuit, and petitioned and was allowed certiorari by this Court on the ground among others that two Courts of the United States were at one and the same time exercising or attempting to exercise conflicting jurisdiction over the assets of the Subsidiary Debtor.

This Court on a hearing sustained the jurisdiction of the Missouri Court and the effectiveness of its Order and injunction and denied the jurisdiction of Mr. Sansberry and the Indiana Court to proceed after the service of the injunction.

In the meantime and while the litigation attacking the Referee's Order was pending, and some forty days after a certified copy of the Order and Injunction aforesaid were filed and recorded under the provisions of Section 21 of the Bankruptcy Act (11 USC 44), the Respondent and the Indiana Trustee consummated the alleged purchase by paying to the Indiana Trustee the sum of $18,750.00, and took and recorded the Trustee Deed under which the claims and by authority of the Indiana Trustee entered

upon the possession of the real estate involved and used and exploited it until May 6, 1944, when this petitioner, upon the mandate of this Court coming down, entered upon and received possession thereof from the respondent's tenant.

At the time petitioner took possession the tenant in possession owed no rent, having paid its rent in advance to respondent. After petitioner took possession on May 6, 1944, he allowed the tenant to continue in possession until the sum of $ ..... rent had accrued for the period after petitioner took possession. These accrued rents were subsequently paid by the tenant to this petitioner upon an Order of the Missouri Court.

SUMMARY.

The petitioner submits that this proceeding is simply a belated effort by a trespasser contemnor and volunteer to reanimate and render effective, at least in part, an alleged jurisdiction of the Indiana Court which was finally litigated in an action between this petitioner and respondent's alleged grantor, whose jurisdiction was under attack, and finally resolved by the opinion of this Court in the case of Duggan v. Sansberry, supra.

On the strength of that opinion the Court below denied this respondent's alleged title based upon the sale under inquiry in the latter case but at the same time awarded him an equitable lien against the subject matter of the void sale to compensate him for his cost of acquiring his void title and for all his expense with interest at 6% per annum until paid or until the lien is foreclosed and subsequently modified its opinion by providing that in the event the foreclosure of the lien resulted in a deficiency, that the judgment should be without prejudice to a claim for any deficiency.

ARGUMENT

The respondent had prayed for general equitable relief and on the trial Mr. Mesirow, then trustee, and Mr. Green, a beneficiary of said trust and now the respondent of record, testified that they had no actual knowledge of the order of the district court below (Missouri) until some two years after they had consummated their alleged purchase with Mr. Sansberry, the trustee in involuntary bankruptcy for the subsidiary debtor pending in the Indiana Court, paid the purchase money to Mr. Sansberry, took his deed and entered into possession of the real estate in question and exploited it until upon the opinion of the Supreme Court in the Duggan v. Sansberry case coming down on May 6, 1946, Mr. Sansberry's attorneys advised him in effect of the review, appeal and decisions of the adverse decision of the Supreme Court which was the first knowledge he or any of the beneficiaries had of the several proceedings and thereafter about May 1, 1946, Mr. Duggan as trustee advised the tenant of this real estate that he owned the property and advised the tenant to pay the May, 1946, rent and subsequent rent to him and that he then took over (Op. 7).

On the equitable issue the District Court found:

> "On his testimony that he did not hear of this Court's decree and injunction until some two years after the alleged consummation of the sale to him by Mr. Sansberry, the complainant urges that he is an innocent and bona fide purchaser of the real estate involved and entitled to relief."
>
> "Regardless of actual knowledge the complainant with knowledge thereof from the fact that notice thereof appeared in the orders of the Indiana Court constituting his chain of title and the fact that a copy of this Court's decree and injunction was recorded in

the recorder's office for Madison County on May 5, 1944, under the provisions of 21 (g) (11 USC 44) of the Act some forty days prior to the consummation of the sale under which complainants claim."

"The Court further finds that an order of the Reference confirming the sale was a necessary step in the chain of title on which complainant relies. The order was appealed and never became binding or effective. Accordingly and regardless of the so-called clash of jurisdiction between the Courts, the title on which the complainant relies was void and of no effect in any event."

"The Court further finds that by undertaking to consummate with Mr. Sansberry the said purchase and sale, and entering into the possession of the property involved and maintaining such possession without the consent of this Court or its trustee that the relationship of the petitioner to the property in question was in effect that of a contemnor, interloper, trespasser and volunteer, and that the complainant derived no rights thereby either legal or equitable or enforceable against the real estate involved herein or against the assets of the subsidiary debtor in the exclusive possession of this Court and its trustee" (R. 64, 65).

The trial Court further found and recited:

"On the basis of his denial until some two years after the consummation of the alleged sale and his entry into possession of the real estate involved and on the theory that he is an innocent purchaser of the property from Mr. Sansberry he claims some equity in the property."

"Regardless of the truth or falsity of his denial, it appears, as heretofore found by the Court, that the complainant was charged with knowledge thereof by operation of law. In any event it appears from the record and complainant's evidence that he had been a practicing lawyer at the Chicago bar since 1912; that Mr. Green and his several associates and bene-

ficiaries had been engaged in attending bankruptcy and liquidation sales of distressed business organizations and purchasing their assets for speculative resale. Prior to consummating the alleged sale the complainant employed a Madison County lawyer who appeared to be a title examiner as well to advise him in the consummation of the sale. In view of the evidence it would appear that the petitioner either had acquired actual knowledge of the decree and injunction or had an amazing ability to avoid acquiring such knowledge. In any event the Court finds from the evidence that the petitioner's relationship to the property in question was that of a mere volunteer, trespasser and interloper and that by reason thereof and by his constructive knowledge from the records from which he claims that he is barred from equitable relief from this Court" (R. 65, 66).

The Court of Appeals, however, concluded from the same oral evidence that neither the appellant or any beneficiary of his trust had any actual knowledge of any fact or circumstance indicating invalidity of the sale at the time he paid the purchase price for the real estate or at the time he disbursed the moneys above stated for the improvement, protection, leasing and insuring that property until March 30, 1946, when he was advised by an attorney for Sansberry of the above mentioned petition for review, appeal and decision (Op. 14).

The Court of Appeals commenting on this petitioner's argument that the respondent cannot be found innocent because he was charged with constructive notice of the Missouri Court's decree and injunction through the reference thereto in Mr. Sansberry's report of sale of April 21, 1944, and by a recording of a copy of that decree and injunction in the office of the Recorder of Madison County, Indiana, on May 5, 1944, before the complete consumma-

tion of the sale (but as stated, neither of those matters were in any way referred to in the abstracts of title covering this property that were furnished to the appellants) (Op. 14) and the Court of Appeals ruled:

> "The law is clear that, in circumstances like the present, where the actual good faith of the purchaser is the issue 'the doctrine of constructive notice is without application (and) his good faith can be challenged only on the ground that he had actual knowledge of the defects in the title, or knowledge of such facts and circumstances as would put a man of ordinary circumspection upon inquiry" (Op. 14).

Continuing, the Court of Appeals ruled that:

> "Appellant was without actual notice of any fact, indication, invalidity of the sale or of any circumstance sufficient to put him upon inquiry in that respect until March 30, 1956, by which time he had paid out the moneys in question and, hence, there is no basis for impugning his actual innocence and good faith" (Op. 14).

The Court of appeals while absolving the respondent of any guilt of violating the lower Court's decree and injunction at the time he consummated the alleged sale and concludes as relevant and significant in that respect the fact that his petitioner failed to give any notice to Mr. Mesirow or any beneficiary of his trust the fact that he had filed a petition for review of the order of the referee approving and confirming the sale under which he claimed, that upon affirmance of the order of the referee without **supersedeas** (accent supplied) appealed to the Seventh Circuit, which likewise affirmed (Op. 7). Duggan then petitioned the Supreme Court for and was granted Certiorari, on which the Supreme Court held that the Indiana sale of this real estate was void and passed no title to the respondent.

Accordingly the Court of Appeals reversed the District Court and granted the respondent an equitable lien on this real estate in the sum representing the purchase price paid in consummation of the "void" sale and for the sums he expended for its improvement, maintenance, protection, insurance and leasing to produce income less the income and profits he derived therefrom while in possession, with simple interest or unreimbursed month' balances, computed at six per cent until dispossessed on May 1, 1946, and to simple interest at the same rate on the principal balance then remaining unpaid to the date of the foreclosure of the lien. And we compute and determine the amount of the lien to which the appellant is entitled to January 1, 1957, as follows:

The Court thereupon computed that there was due appellant as of May 1, 1946, the sum of $10,220.29, with interest on monthly balances to May 1, 1946, in the sum of $1,871.53, together with simple interest at six per cent per annum on the principal balance of $10,220.29 unreimbursed on May 1, 1946, from that date until January 1, 1957, in the amount of $6,721.00 and calculated the amount of the equitable lien to January 1, 1957, at the sum of $18,812.82.

And on the finding that there was no basis in the evidence and the law to support the judgment for $28,000.00 entered in favor of this petitioner on his counterclaim. The Court of Appeals accordingly reversed the judgment of the District Court and remanded the cause to the District Court with directions to grant and decree to appellant an equitable lien upon said real estate in the amount of $18,812.82 to bear interest at the rate of six per cent per annum from January 1, 1957, to the date of payment or foreclosure of said lien.

The judgment of the Court of Appeals was rendered on February 4, 1957, and subsequently Mr. Meirow having

died and Mr. Green being substituted on the record for him, the Court on his motion modified its judgment by providing that in the event there was a deficiency on a foreclosure of the equitable lien that its judgment should be without prejudice to any claim the respondent might file to recover such deficiency from the general assets of the estate.

To which judgment and modified judgment this petitioner duly filed his motions for rehearing, which the Court of Appeals considered and overruled, as appears from the docket entries supra.

CONCLUSION

In view of our detailed statement we have refrained from discussing at length the subject matter embraced in the seven Questions propounded, and we do not wish to be considered as having waived any of the questions raised.

Respectfully submitted,

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